

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 24

Q.B.CONSTRUCTION, INC.<sup>1</sup>  
(Coliseum Tower Project)

Employer

and

UNION DE CARPINTEROS DE PUERTO  
RICO, INC.

Petitioner

Case: 24-RC-8502

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on November 10, 2005 before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record<sup>2</sup> in this proceeding, the undersigned makes the following findings and conclusions<sup>3</sup>:

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<sup>1</sup>The Employer's name appears as stipulated to by the parties at the hearing.

<sup>2</sup>The hearing officer's rulings made at the hearing are free from prejudicial errors and are hereby affirmed. The Employer and the Petitioner filed Briefs which have been duly considered.

<sup>3</sup> a. The parties stipulated, and I find, that the Petitioner, Unión de Carpinteros de Puerto Rico, is a labor organization within the meaning of Section 2(5) of the Act.

b. The Petitioner claims to represent certain employees of the Employer, and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

c. Q.B. Construction, Inc., is a corporation engaged in the construction business in the Commonwealth of Puerto Rico. Within the past 12 month period, it purchased and received

## I. Background

The Employer, Q.B. Construction, Inc., a corporation engaged in the construction business in the Commonwealth of Puerto Rico, maintains an office and place of business in San Juan, Puerto Rico. Union de Carpinteros de Puerto Rico (herein Petitioner) filed the instant petition seeking to represent the construction employees employed by the Employer at its Coliseum Tower Project, located in San Juan, Puerto Rico.

The Coliseum Tower project<sup>4</sup> entails the construction of a 25-floors residential condominium with a five-story parking lot, commercial business spaces on the ground level, and some recreational and other common areas such as a swimming pool. The Employer is responsible for the construction of the concrete shell structure of the building.

## II. Position of the Parties

The Employer contends that I should dismiss the instant petition because of the imminent cessation of the Coliseum Tower construction project. The Petitioner, to the contrary, disputes the assertion that the completion of the project is imminent and asserts that an election should be directed on the basis that there is sufficient time to afford the parties to bargain collectively.

## III. Summary

The Employer's president, Paul Lavergne,<sup>5</sup> testified that the construction of the Coliseum Tower project commenced on an unspecified date about one to one and a half years ago and should end by May and/or the summer of 2006.

Lavergne further testified that the Employer is only doing the structural concrete work or shell of the building, which consists of building 25 floors with 192 apartments and a five-story parking lot.<sup>6</sup> He stated that this portion of the work should be concluded in four months and that the finishing would be performed by subcontractors which have been already hired. However, the contract between Car Par Corporation and the Employer setting forth commencement and ending dates for the project, or documents showing the various phases of the project, were not submitted in evidence. Likewise there was no evidence submitted reflecting the identity of the subcontractors, their date

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goods and materials valued in excess of \$50,000 directly from points outside of Puerto Rico and caused them to be transported to its place of business located in San Juan, Puerto Rico. Based on the above, I find that the Employer is engaged in commerce within the meaning of the Act. Accordingly, the assertion of jurisdiction is appropriate herein.

<sup>4</sup>Car Pan Corporation subcontracted the construction of the Coliseum Tower project to Q.B. Construction Inc., at a cost of 34 million dollars.

<sup>5</sup>Lavergne was the sole witness presented by the Employer at the hearing.

<sup>6</sup>Six apartments per floor.

of hire, or a description of the work to be performed. At the present, there are approximately 65 employees employed at the construction site in the different classifications sought by the Petitioner.<sup>7</sup> According to Lavergne, the five-story parking lot has been concluded and the Employer is currently working on Floor 15 of the condominium tower. However, he also stated that there still are some employees working on Floors 13 and 14 and on some portions of the parking deck and other unspecified areas of the job, not limited to the condominium tower. Although Lavergne testified that the Employer expects to finish the work being performed by the petitioned for unit employees in four months, and that the complement of unit employees would be reduced gradually during this time to approximately 10 employees, he could not specify the exact date when construction of the floors began or how long it had taken to construct the floors already completed, other than stating that construction of the floors began about five or six months ago.<sup>8</sup> The cost of the project is approximately 34 million dollars, of which the Employer has assertedly already been paid between 15 to 18 million. No documentary evidence was introduced by the Employer to support its testimony concerning the work assertedly completed or the probable completion date of the Coliseum Tower project.<sup>9</sup>

#### IV. Analysis

The Board in Clement-Blythe Companies, 182 NLRB 502 (1970) recognized that there is a need in the construction industry for permitting the collective bargaining process to begin as early as possible, so as to accommodate the fluctuating nature and unpredictable duration of construction projects. In the present case, given the very limited and unspecific testimony presented, the lack of supporting documentary evidence and the improbability that the project will be completed in four months, I find that the unsupported testimonial assertions with regard to completion date to be speculative and insufficient to reliably find that the instant petition is barred on the grounds of imminent cessation. The Board has held that mere speculation as to the uncertainty of operations is not sufficient to decline to hold an election. Canterbury of P.R., 225 NLRB 309 (1976); Hazard Express, Inc., 324 NLRB 989 (1997).

I also find that from the overall record evidence that there is a substantial complement of employees employed by the Employer in the petitioned for unit at the time of the hearing. Accordingly, I shall direct an election herein.

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<sup>7</sup>Lavergne was not able to remember the specific number of employees in each classification.

<sup>8</sup>The project started with the excavation process and subsequently, continued with the preparation of the foundations.

<sup>9</sup>Lavergne admitted that there are certifications of work done and project plans which shows the different phases of the construction, however these documents were not submitted at the hearing.

V. The Unit

The following unit is an appropriate unit within the meaning of Section 9(b) of the Act:<sup>10</sup>

Included:

All carpenters and carpenter helpers, masons and mason helpers, light truck operators, welders, and non-skilled laborers employed by the Employer at its place of business in San Juan, Puerto Rico (Coliseum Tower Project).

Excluded:

All other employees, guards and supervisors as defined in the Act.

There are approximately 65 employees in the unit.

VI. Direction of Election

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **Unión de Carpinteros de Puerto Rico**. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and the replacements of those economic strikers. Unit employees in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are: (1) employees who have quit or been discharged for cause since the designated payroll period; (2) employees engaged in a strike who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

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<sup>10</sup>The unit appears as stipulated to by the parties.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *North Macon Health Care Facility*, 315 NLRB, 359, 361 (1994); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, such list must be received in the NLRB Region 24 Regional Office, La Torre de Plaza Suite 1002, 525 F.D. Roosevelt Ave., San Juan, Puerto Rico 00918-1002, on or before **December 8, 2005**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (787) 766-5478. Since the list will be made available to all parties to the election, please furnish a total of **three** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to the Election provided by the Board in areas conspicuous to potential voters for a minimum of **three** working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least **five** full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so stops the employers from filing objections based on nonposting of the election notice.

VII. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570. This request must be received by the Board in Washington by **December 15, 2005**.

Dated at San Juan, Puerto Rico, this 1<sup>st</sup> day of December, 2005.

/s/

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Marta M. Figueroa  
Regional Director,  
National Labor Relations Board  
Region 24  
La Torre de Plaza, Suite 1002  
525 F.D. Roosevelt Avenue  
Hato Rey, Puerto Rico 00918-1002  
E-mail: [region24@nlrb.gov](mailto:region24@nlrb.gov)